

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

EMANUEL L. FINCH SR.,

Plaintiff,

V.

BRADLEY GRAHAM, CYNTHIA  
BROOKS, JOE SOFIA,

## Defendants.

CASE NO. C15-5305 RBL-JRC

ORDER TO SHOW CAUSE OR FILE  
AN AMENDED COMPLAINT

The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States Magistrate Judge J. Richard Creature pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), and local Magistrate Judge Rules MJR1, MJR3 and MJR4.

Plaintiff's complaint is currently before the Court for initial review pursuant to 28 U.S.C. § 1915A. Plaintiff alleges that defendant Graham, a Pierce County detective, testified untruthfully in a pre trial hearing (Dkt. 1, p. 3). Plaintiff alleges that defendant Sofia, a community corrections officer, violated plaintiff's constitutional rights by creating a pre sentence investigation report without giving plaintiff the opportunity to participate (Dkt. 1-1, p. 4).

1 Plaintiff has not alleged any facts regarding the final defendant Ms. Brooks, another Pierce  
2 County detective.

3 The Court finds that plaintiff fails to state a claim against any named defendant. To state  
4 a claim pursuant to 42 U.S.C. § 1983, at least three elements must be met: (1) defendant must be  
5 a person acting under the color of state law; (2) the person's conduct must have deprived plaintiff  
6 of rights, privileges or immunities secured by the constitution or laws of the United States,  
7 *Parratt v. Taylor*, 451 U.S. 527, 535, (1981) (overruled in part on other grounds); *Daniels v.*  
8 *Williams*, 474 U.S. 327, 330-31, (1986); and (3) causation *See Mt. Healthy City School Dist. Bd.*  
9 *of Educ. v. Doyle*, 429 U.S. 274, 286-87, (1977); *Flores v. Pierce*, 617 F.2d 1386, 1390-91 (9th  
10 Cir. 1980), *cert. denied*, 449 U.S. 875, (1980). When a plaintiff fails to allege or establish one of  
11 the three elements, his complaint must be dismissed. That plaintiff may have suffered harm, even  
12 if due to another's negligent conduct does not in itself necessarily demonstrate an abridgment of  
13 constitutional protections. *Davidson v. Cannon*, 474 U.S. 344, 106 S. Ct. 668 (1986). Vague and  
14 conclusory allegations of official participation in civil rights violations are not sufficient to  
15 withstand a motion to dismiss. *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992).

16 In screening plaintiff's complaint the Court is guided by 28 U.S.C. § 1915A which states:  
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18 (a) Screening.--The court shall review, before docketing, if feasible or, in any  
19 event, as soon as practicable after docketing, a complaint in a civil action in which  
a prisoner seeks redress from a governmental entity or officer or employee of a  
governmental entity.

20 (b) Grounds for dismissal.--On review, the court shall identify cognizable claims  
21 or dismiss the complaint, or any portion of the complaint, if the complaint--  
22 (1) is frivolous, malicious, or fails to state a claim upon which relief may  
be granted; or  
23 (2) seeks monetary relief from a defendant who is immune from such  
relief.

24 (c) Definition.--As used in this section, the term "prisoner" means any person  
incarcerated or detained in any facility who is accused of, convicted of, sentenced

1 for, or adjudicated delinquent for, violations of criminal law or the terms and  
2 conditions of parole, probation, pretrial release, or diversionary program.

3 Defendant Graham has absolute immunity for testimony he gave at plaintiff's pre trial  
4 hearing. Both private individuals and government officials who serve as witnesses are absolutely  
5 immune from suit for damages with respect to their testimony. *See Briscoe v. LaHue*, 460 U.S.  
6 325, 326 (1983); *Paine v. City of Lompoc*, 265 F.3d 975, 980 (9th Cir. 2001); *Franklin v. Terr*,  
7 201 F.3d 1098, 1101-02 (9th Cir. 2000); *Bouman v. Block*, 940 F.2d 1211, 1233 (9th Cir. 1991);  
8 *Meyers v. Contra Costa Cnty. Dep't of Soc. Servs.*, 812 F.2d 1154, 1156 (9th Cir. 1987). This  
9 immunity extends to testimony given at pre-trial hearings. *See Holt v. Castaneda*, 832 F.2d 123,  
10 127 (9th Cir. 1987).

11 Plaintiff fails to state a claim against defendant Brooks because plaintiff does not allege  
12 any facts regarding this defendant.

13 Plaintiff fails to state a claim against defendant Sofia because defendant Sofia has  
14 absolute immunity for his actions in preparing a pre sentence report. “[P]robation officers  
15 preparing reports for the use of state courts possess an absolute judicial immunity from damage  
16 suits under [§] 1983 arising from acts performed within the scope of their official duties.”  
17 *Demoran v. Witt*, 781 F.2d 155, 157 (9th Cir. 1986); *see also Burkes v. Callion*, 433 F.2d 318,  
18 319 (9th Cir. 1970) (per curiam).

19 Accordingly, the Court orders plaintiff to show cause why this action should not be  
20 dismissed for failure to state a claim with the dismissal counting as a strike pursuant to 28 U.S.C.  
21 §§ 1915(c) and (g). In the alternative plaintiff may submit an amended complaint if plaintiff  
22 believes he can state a claim against any of the named defendants.

1 Plaintiff must file either his response to this order to show cause or his amended  
2 complaint on or before June 26, 2015, or the Court will recommend dismissal of this action with  
3 the dismissal counting as a strike.

4 Dated this 11<sup>th</sup> day of May, 2015.

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7 J. Richard Creatura  
8 United States Magistrate Judge  
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